

Art Unit: 1657

**ATTACHMENT TO INTERVIEW OF AUGUST 27, 2008**

Examiner indicated to Attorney Robert T. Ronau that all rejections and claims will be allowed if the statement as submitted in the response of July 25, 2008 as recited:

“Applicants gratefully acknowledge the reminder regarding U.S. Patent Rules of Deposit provided by the Examiner in the Office Action sent February 21, 2008. Applicants submit that ATCC 46829 is currently available from ATCC, P.O. Box 1549, Manassas, VA, 20108. Applicants will ensure that the strain used in this invention is properly deposited in accordance with 37 C.F.R. §§1.801 - 1.809 prior to issuance so that Applicants can guarantee accessibility for the duration of the patent.” ;

is acceptable by higher authority than this Examiner. This Examiner has serious doubts that the wording meets the requirements as noted in the last office action which recited:

“Even a deposit made under the Budapest Treaty and referenced in a United States or foreign patent document would not necessarily meet the test for known and readily available unless the deposit was made under conditions that are consistent with those specified in these rules, including the provision that requires, with one possible exception (37 CFR 1.808(b)), that all restrictions on the accessibility be irrevocably removed by the applicant upon the granting of the patent. Ex parte Hildebrand, 15 USPQ2d 1662 (Bd. Pat. App. & Int. 1990).

The specific strain may be in a depository as well as old in the art, however, for suitable availability, Applicant is required to have the strain available without restrictions as noted above.”

Attorney indicated that the strain is not owned by Pfizer but was bought from the depository. Attorney has noted that a deposited strain in accordance with the U.S. Rules of Deposit will be processed. Examiner indicated that as long as the Deposited strain as long as it is the same strain even with a different number will be accepted since it is the same strain and inherently have the same properties.

Examiner cannot allow this application with a proposed Examiner's Amendment with respect to the required statement at the present time until a deposited strain is obtained. Applicant can submit evidence that the original strain ATCC by another which may have issued a required statement for another patent that may be suitable that the strain is available with restrictions that have been irrevocably removed.

**Examiner will submit an action in the near future since this Examiner has at least a few weeks to act on this application.** Applicant will have the opportunity to submit the above requirements prior to the submission of a final rejection.

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Attorney is kindly requested to contact this Examiner as soon as the deposit information is available to make the appropriate statement to allow this application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HERBERT J. LILLING whose telephone number is 571-272-0918. The examiner can normally be reached on WORK AT HOME MAXIFLEX.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JON WEBER can be reached on 571-272-0925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

H.J.Lilling: HJL

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August 27, 2008

/HERBERT J LILLING/  
Primary Examiner Art Unit 1657